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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,938	10/07/2003	Kim J. Dato	JDATO.001DV1	6022
7590	02/09/2005		EXAMINER	
Robert F. Gazdzinski, Esq. Gazdzinski & Associates Suite 375 11440 West Bernardo Court San Diego, CA 92127			HAUGLAND, SCOTT J	
			ART UNIT	PAPER NUMBER
			3654	
DATE MAILED: 02/09/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	Applicant(s)	
	DATO ET AL.	
Examiner	Art Unit	
Scott Haugland	3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 17 November 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 28-31,33-36 and 38-59 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 28-31,33-36,38-56,58 and 59 is/are rejected.

7) Claim(s) 57 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/17/04.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 58 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The application as filed does not disclose that the housing element comprises a low-cost polymer material as recited in claim 58, line 2.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 36, 51-54, and 58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 36 is indefinite since it defines the invention by comparing it to a hypothetical device the structure of which cannot be determined.

The language of claim 51, lines 11-12 appears inaccurate since the spindles 820a, 820b are within the recess and are used to position the caps relative to the spools.

Claim 54 is unclear since it is not clear how a spindle can be part of a recess.

The term "low-cost" in claim 58 is a relative term which renders the claim indefinite. The term "low-cost" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 28, 36, 40-42, 51-56, and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by Cayer (U.S. Patent No. 4,369,929).

Cayer discloses a dispenser for spooled materials, comprising: a housing element 20, 50 having a recess formed therein, a plurality of spools of material 12-15 disposed substantially within the recess, and a plurality of apertures 30-33 disposed in

proximity to the spools through which the materials are dispensed. Cayer discloses forming the dispenser of plastic (col. 3, lines 21-23) which implies a polymeric material.

With regard to claims 40-42, the apparatus disclosed by Cayer is equivalent to that formed by the claimed process. The materials on the spools are curled in their wound state, at least.

With regard to claim 51, the structure that is used to position the cap 50 of Cayer on the housing is only that portion of the handle 45 that is not within the recess since the cap does not extend into the recess.

With regard to claim 54, the spindles of Cayer are seen to be formed as part of the recess to the extent as those of the application since they extend into the recess.

With regard to claim 55, the material of Cayer is pre-curved since it has a curl before being dispensed, i.e., as a result of being wound on spools.

With regard to claim 56, note that the rows of spools are offset from each other by a gap in which a partition (e.g., 41,43) is located.

With regard to claim 59, the housing elements maintain the spools in alignment without the use of the partitions 40-43. Note the space between the rolls of material and the partitions in Figs. 1, 2, and 4. Alignment is maintained by spindles 52.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cayer (U.S. Patent No. 4,369,929) in view of Goldstein (U.S. Patent No. 5,407,417) and Schwartz (U.S. Patent No. 3,948,455).

Cayer is described above.

Cayer does not disclose ribbon wound onto said spools in a substantially helical pattern or that one of the housing elements has at least a portion that is substantially transparent.

Goldstein teaches storing a quantity of ribbon on a spool by winding it in a helical lay pattern on the spool.

Schwartz teaches providing a dispenser for wound ribbon with a transparent portion to enable a user to view the ribbon in the dispenser and determine the quantities remaining.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Cayer with spools containing quantities of curled ribbon disposed on the spools in a helical lay pattern as taught by Goldstein to provide for convenient storage and dispensing of ribbon.

It would have been further obvious to make a portion of the dispenser transparent as taught by Schwartz to enable a user to view the ribbon in the dispenser and determine the quantities remaining.

Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cayer.

Cayer is described above.

Cayer does not disclose that the length, width, and depth of the dispenser are unequal.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the length, width, and depth of the dispenser of Cayer unequal since it would have been clear, especially from the teachings of the Figs. 6-8 embodiment, that the length, width, and depth of the dispenser need not be equal for proper operation of the dispenser. Dimensions, obviously, could be varied to obtain various aesthetic effects.

Claims 29-31, 33, 34, and 43-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cayer (U.S. Patent No. 4,369,929) in view of Goldstein (U.S. Patent No. 5,407,417).

Cayer is described above.

Cayer does not disclose quantities of curled ribbon disposed on the spools in a helical lay pattern.

Goldstein teaches storing a quantity of ribbon on a spool by winding it in a helical lay pattern on the spool.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Cayer with spools containing quantities of curled ribbon

disposed on the spools in a helical lay pattern as taught by Goldstein to provide for convenient storage and dispensing of ribbon.

With regard to claims 33 and 47, it would have been obvious to fully utilize the spools when providing spools of helically wound ribbon to avoid waste of space and materials (e.g., spool and packaging material) in accordance with the teachings of Cayer and Goldstein. The ribbon of the resulting dispenser would traverse substantially all of the length of the apertures during unwinding.

With regard to claim 44, it would have been obvious to use the modified device of Cayer to store ribbons that differ in at least one attribute since Cayer teaches storing a variety of materials and it is common to require a supply of different ribbons.

With regard to claims 44 and 45, the spools necessarily have a radius similar to the curl radius of the ribbon since they have a curl resulting from being wound on the spools.

With regard to claim 45, the ribbon of the resulting apparatus is pre-curved since it has a curl before being dispensed, i.e., as a result of being wound on spools.

Claims 38 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cayer in view of Goldstein as applied to claims 28 and 45 above, and further in view of Brown (U.S. Patent No. 987,952).

Cayer does not disclose that the distal portions of the ends of the spools do not have ribbon wound on them.

Brown teaches forming a spool for web material with distal ends (see Fig. 2) that do not have material wound on them.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the spools of Cayer with distal ends that do not have material wound on them as taught by Brown to facilitate retaining of material on the spools without interference with sides of the housing that encloses the spools.

Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cayer in view of Schwartz.

Cayer does not disclose that the dispenser is made of a transparent material. Cayer does not explicitly state that the dispenser is made of low-cost material.

Schwartz teaches providing a dispenser for wound ribbon with a transparent portion to enable a user to view the ribbon in the dispenser and determine the quantities remaining.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the dispenser transparent as taught by Schwartz to enable a user to view the ribbon in the dispenser and determine the quantities remaining.

It would have been obvious to one having ordinary skill in the art to make the dispenser of Cayer of low-cost polymeric material to minimize its expense.

Note that there is no need in the device of Cayer for any curling apparatus.

***Allowable Subject Matter***

Claim 57 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicants arguments filed 11/17/04 have been fully considered but they are not persuasive.

Applicants argue that Cayer does not disclose first and second groups of spools in juxtaposed offset orientation along with other limitations of claim 28. However, the spools of Cayer are in rows of two. The rows are offset by a space or gap that contains a partition (e.g., 40,42). Apertures 30-33 are formed in at least one of the faces of the dispenser.

Applicants argue, with regard to claim 40, that Cayer does not suggest placing ribbon in the dispenser or curling material. However, claim 40 does not require curling of ribbon before placing it on a spool. The material is curled when wound on a spool and remains curled at least while it is on the spool. Any of the dispensed materials disclosed by Cayer are ribbons since they are long thin webs.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Haugland whose telephone number is (703) 305-6498. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on (703) 308-2688. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*sjh*  
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2/3/05

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